



Utah Republican Party
117 E South Temple
Salt Lake City, UT 84111
www.utgop.org

November 10, 2015

VIA EMAIL AND U.S. MAIL

Lieutenant Governor Spencer J. Cox
Utah State Capitol Complex, Ste. 220
Salt Lake City, Utah 84114-2325
Email: sjc@utah.gov

Dear Lt. Governor Cox:

I write in my capacity as the chairman of the Utah Republican Party (the “Party”) to address recent comments made by your counsel at a court hearing in *Utah Republican Party v. Herbert, et al.*, Case No. 2:14-cv-876-DN (D. Utah), regarding “the next lawsuit”¹ your office anticipates between the Party and the State, and by your office staff regarding the “crazy stuff” that I have been saying regarding how the Party intends to move forward following the Court’s ruling striking down at least a portion of SB54 as unconstitutional.²

I intend to follow up with a more detailed letter outlining the Party’s position on the issues we understand have arisen, and requesting a response to indicate where the State may disagree with the Party’s position, and what basis it has for any such disagreement. Given that I understand the desire on both sides to expedite these important matters, I believe the only available course is to frame the issue and resolve it in court.

As your counsel stated at the October 27, 2015 hearing in the lawsuit, we understand the potential disagreement concerns chiefly two provisions from SB54: Utah Code Ann. §§ 20A-9-101(12)(d) and 20A-9-406(3). Assuming that is the case, the Party views the issues as potentially ripening claims similar to those asserted in the present lawsuit and the Court’s recent order ruling that the open primary provision of SB54 violated the Party’s constitutional rights.³ Indeed, as

¹ *Utah Republican Party v. Herbert, et al.*, Case No. 2:14-cv-876-DN (D. Utah), Oct. 27, 2015 Hrg. Tr. at 35:13-15 (“which brings me back to my original point about membership because that’s really going to be the next lawsuit”).

² Robert Gehrke, *Utah Election Dispute Likely Headed Back To Court, Unless Lawmakers Intervene*, SALT LAKE TRIBUNE, Nov. 4, 2015, available at <http://www.sltrib.com/home/3139170-155/utah-election-dispute-likely-headed-back>.

³ The United States Supreme Court has summarized the applicable legal principles:

you will see in my forthcoming letter, we feel the issue raised by your counsel is contrary to the positions taken by the Court and the State in the lawsuit, on which the Party has relied in bringing itself into compliance with SB54.

So on this point, it seems the question is principally one of how SB54 burdens the Party's constitutional rights under the interpretation your office now seeks to impose under those provisions governing a QPP. At the same time, it appears from a portion of your counsel's comments that the issue may turn in some respects on a question of state law, including whether there is an internal conflict between the various provisions of SB54, and how those provisions should be interpreted.

Accordingly, when you receive my forthcoming letter, I would appreciate a prompt reply that details as best as you can where your office disagrees, and on what basis, so that we can proceed in an expedited manner to the court for a prompt resolution, perhaps even in the existing matter. In that respect, I anticipate that we may also want to ask the court to certify a question of state law for the Utah Supreme Court, as appropriate, under Utah Code Ann. § 78A-3-102(1).

Sincerely,

A handwritten signature in black ink, appearing to read "JMS", is positioned above the typed name of the sender.

James Evans, Chairman
Utah Republican Party

In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views.

...

Unsurprisingly, our cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party "select[s] a standard bearer who best represents the party's ideologies and preferences." The moment of choosing the party's nominee, we have said, is "the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community."

California Democratic Party v. Jones, 530 U.S. 567, 575 (2000) (quoting *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 216 (1986), and *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 224 (1989)).